IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.2552 OF 2006

Gajanan @ S.S. Umbranikar .... Petitioner
Vs.
Suresh G. Kango & Ors. .... Respondents

Shri J.S. Deo for the Petitioner.

Shri G.S. Godbole for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 22, 2006

P.C:

The petitioner challenges the order dated 7-4-2006 passed by the Addl. District Judge, Pune in Civil Appeal No.235 of 2006. By the impugned order, the lower Court has dismissed the application for stay of the proceedings in execution taken out by the respondents in relation to the order of eviction passed in Darkhast Proceedings No.46 of 2005. The sole contention of the petitioner is that the decree of eviction is not binding upon the petitioner on the ground that he was not a party to the proceedings before the Court in which the decree of eviction has been passed. Undoubtedly, the proceedings for eviction were initiated on 18-3-1997 and the decree of eviction was passed on 2-2-2001. It is also not in dispute that the petitioner was not a party to the said proceedings as he

was not available in the house at the relevant time. The Court below has held that nothing has been placed on record to disclose that the petitioner was a family member of the deceased tenant at the relevant time and, therefore, no fault can be found for not joining the petitioner as a party to those proceedings and hence the execution of the decree cannot be stayed at the instance of the petitioner. The finding is in accordance with the provisions of law and does not warrant interference. Nothing is brought to my notice which could disclose that the petitioner was a family member at the time of initiation of the proceedings for eviction or pursuant to the death of the original tenant or even at the time the order of eviction was passed. It is true that one certificate stated to have been issued by the Deputy Commissioner of Police was placed on record. The Court below has clearly held that the said certificate was not established and proved in accordance with the provisions of law. Obviously therefore, no credence can be given to such certificate and in that regard no fault can be found with the Court below in not giving any credence to such certificate. Merely because the petitioner has filed independent suit challenging the decree, that by itself cannot be a justification for stay of the execution proceedings. In the absence of any prima facie right being shown to occupy the premises in question, question of staying the execution proceedings,

at the instance of the petitioner in relation to the lawful decree of eviction obtained by the respondents, does not arise. Hence the petition is devoid of merits. There is no jurisdictional error disclosed in the impugned order so as to warrant interference under Article 227 of the Constitution of India. Hence the petition fails and is rejected. However, the parties are directed to maintain status quo for a period of three weeks.

(R.M.S. Khandeparkar, J.)

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